

Intesa General Terms and Conditions (ed. 2024)

These General Terms and Conditions ("GTC") together with the relevant Order Document(s), constitute the complete agreement between the Parties with respect to each of the transactions made under these GTC (collectively, the "Agreement") pursuant to which the Customer may order the services of Intesa (the "Services" or in the singular the "Service") and the products and services of third parties ("Non-Intesa Products").

The order documents ("Order Document(s)") include the Customer's order document to Intesa (the Order Form) and/or Intesa's offer document to the Customer (Offer Proposal) and its technical, economic, personal data processing and any additional attachments (all together "Annexes").

The documents identified as Annexes provide additional terms applicable to the Services.

In the event of any discrepancy between the provisions of the different contractual documents, the Order Document(s) shall prevail over the GTC. In case of discrepancy between the provisions of the different documents contained in the Order Documents, the Order Form or the Offer Proposal shall prevail over the Annexes, unless otherwise specified in the Order Form or Offer Proposal. With reference to the above, in the event that the Customer's internal processes require the Customer to generate its own purchase order, the Customer shall ensure that the wording of such order document is consistent with the provisions of these GTC and the Order Documents of Intesa.

Any terms and conditions of the Customer's purchase order that are additional to the Agreement shall be ineffective unless Intesa expressly confirms such additional terms in writing.

For the avoidance of doubt, any terms and conditions of the Customer's purchase order that are additional to the Agreement shall have no effect, even if Intesa executes or fulfils an order of the Customer without expressly objecting to the terms and conditions of purchase referred to therein.

1. Services

- a. The Services consist in the performance of an assignment, provision of assistance, or authorisation to access a resource that Intesa makes available to the Customer, in the manner specified in an Order Document.

1.1 Ownership and licence of Services materials

- a. Intesa, within the scope of the provision of the Services, provides the Pre-Existing Materials to the Customer. Pre-Existing Materials are pre-existing works provided to the Customer, already protected by copyright law, but not made for the Customer under the Order Document. Pre-Existing Materials also include any modifications or updates to such pre-existing works made during the provision of the Services. Some Pre-Existing Materials may be subject to a separate licence agreement (Licensed Pre-Existing Materials). A software program is an example of Licensed Pre-Existing Material and is subject to the relevant licence terms.
- b. Intesa, within the scope of the provision of the Services, shall hold the copyright in the works protected by copyright law that it may develop for the Customer upon Customer's request, unless otherwise provided in the Order Documents.



In.Te.S.A. - Iniziative Telematiche per i Servizi Applicativi S.p.A.

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Capitale Sociale € 6.300.000 i.v. • Partita IVA e Codice Fiscale: 05262890014 • R.E.A. n. 696117

Sede legale: Strada Pianezza, 289 - 10151, Torino, Italy
INTESA@pec.trustedmail.intesa.it • marketing@intesa.it • www.intesa.it

1.2 Use of Services

- a. The Customer shall respect and fulfil, without any charge to Intesa, its obligations in order to support Intesa in the performance of the Services.
- b. Users authorised by the Customer may access the Services only to the extent granted by the authorisations that the Customer acquires. The Customer is responsible for the use of such Services by any user, who is not an employee or supplier of Intesa, accessing the Services through the Customer's account.
- c. For the Customer's use of the Services, the following terms of use shall apply for acceptance:
 - the Services may not be used for prohibited activities or the dissemination of obscene, offensive, illegal or fraudulent content. Examples of prohibited activities are facilitating, damaging, interfering with or violating the integrity or security of a network or system, circumventing filters, sending unwanted, illegal or misleading messages, introducing viruses or code that is harmful or violates the rights of third parties;
 - the Customer may not: i) except where such right cannot be contractually excluded under applicable law, reverse engineer any component of the Services; ii) assign or resell direct access to the Services to a third party not belonging to the Customer's corporate group; or iii) combine the Customer's value-added Services to create a Customer-branded solution for resale to the Customer's end customers, for which the Customer charges a fee (unless permitted by Intesa in writing).
 - the Customer is aware that Intesa provides trust services in accordance with EU Regulation No. 910/2014 - eIDAS, applicable national regulations, including subsequent updates. Therefore, the Customer, in case of purchasing fiduciary services, shall use them in compliance with the standards and guidelines imposed by national and international regulations or Authorities or the fiduciary services operating manuals.

2. Modifiche dei Servizi Changes to Standard Services

- a. At any time and at its own discretion, upon notice to the Customer, Intesa may change the Services, including the corresponding descriptions.
- b. The purpose of any modification is to: i) make available additional features and functionality; ii) enhance and clarify existing commitments; or iii) maintain alignment with currently adopted operational and security standards and/or applicable laws. The purpose will not be to degrade the security or functionality of the Services.
- c. Any Modifications shall be effective from the effective date specified in the Notice to the Customer. The Customer agrees that any Modifications that do not meet the conditions specified in b) above shall only take effect: i) at the time of a new order; ii) on the date of renewal of the contractual period of Services that are automatically renewed.

3. Termination

- a. Either party may terminate the Order Document relating to the performance of a Service if there is a serious breach of the agreed terms of the Service, which is not remedied by the breaching party within a reasonable time. In the event that Intesa terminates the Order Document as a result of a serious breach by the Customer, the Customer shall pay Intesa the amounts set out in points I and II of letter c. below, without prejudice to any legal remedies available to Intesa. If Intesa decides to withdraw a Service from

the market, it will provide at least 90 days' notice. The Customer shall pay the fees for the Services provided until the effective date of the withdrawal.

- b. Unless otherwise agreed by the Parties in the Order Document, notwithstanding Article 1671 of the Civil Code, the Customer undertakes:
 - I. not to withdraw from the Agreement in the event it has a duration of 12 months or less;
 - II. not to withdraw from the Agreement, in the event it has a duration of several years, before 24 months have elapsed since it was signed.
- c. Without prejudice to the provisions of lit. e) hereof, in the event of withdrawal or termination without cause by the Customer after the 24th month or termination by Intesa due to non-performance by the Customer, the Customer shall:
 - I. pay an amount equal to 10 (ten) % of the remaining unbilled fees; and
 - II. pay any incurred and/or additional expenses that Intesa will have to incur as a result of the early termination, such as any expenses to be paid to its suppliers or resulting from the reallocation of resources. Intesa will apply reasonable measures to reduce these additional costs.
- d. Intesa may decide to suspend or restrict, to the extent necessary, the Customer's use of a Service, if it considers that there is a serious breach by the Customer of its contractual obligations or a breach of security, statutory conditions or terms, set out in Article 1.2 above. Where possible, prior to a suspension, Intesa will notify the Customer of the reasons for the suspension. If the cause of the suspension can be reasonably remedied, Intesa will inform the Customer of the action to be taken to resume the Services. If the Customer, after a reasonable period of time, continues to fail to perform its obligations, Intesa may terminate the contract for the Services, charging the Customer the amounts referred to in items I and II of letter c. above.
- e. The Customer may also withdraw from the Service concerned by giving 30 days' notice: (i) in the event of a written order of a government which is due to causes directly attributable to Intesa or the services provided by Intesa and does not result from a breach in any way attributable to the Customer or a public authority, as a result of a mandatory change in the applicable law or mandatory change in the Services which Intesa cannot comply with; (ii) if a change in the Service results in the Customer not complying with the applicable laws (iii) if Intesa informs the Customer of a change with a significant adverse effect on the Customer's use of the affected Service, provided that Intesa has 90 days to work with the Customer to minimise that effect, including transitioning the Customer to another service; or (iv) following notification of withdrawal of a Service. In the event of a termination for any of the above reasons, Intesa will refund the portion of any prepaid amount for the affected Service relating to the period after the date of termination. The Customer may terminate the Order Document in the event of a serious breach of contractual obligations by Intesa, providing reasonable notice to enable Intesa to fulfil such obligations. In the event of termination, Intesa may assist the Customer in transferring the Content to an alternative technology upon payment of an additional fee and subject to separately agreed terms.

4. Content and Protection of Personal Data

- a. Content consists of all data, software and information that the Customer and its authorised users provide, authorise access to or input into the Services ("Content"). The provision of, access to, or use of Content under the Services does not affect the Customer's ownership or licence rights in such Content. Intesa and its suppliers shall access and use the Content solely for the purpose of providing and operating the applicable Services. Intesa will treat all Content as confidential, disclosing it for use only by employees, suppliers and solely for purposes related to the provision of the Services.
- b. Customer is responsible for obtaining all necessary permissions and rights and for enabling and granting them to Intesa and its suppliers so that they may use, provide, store and process Content, or access and

use Customer's systems and other processing environments, in connection with the Services. The Customer shall disclose the necessary information and obtain the legally required consent before the Customer provides Intesa or authorises Intesa to access Content that contains information about individuals, including personal or other regulated data in such Content. The Customer is responsible for performing a proper backup of the Content, unless the Order Document for a Service specifies that such operation is to be performed by Intesa. Customer shall not provide or permit access to Content that may be subject to public regulation or may require additional security measures beyond those specified by Intesa for the Services, unless explicitly permitted in the terms of the relevant Order Document or unless Intesa has previously agreed in writing to implement the additional security measures.

- c. Intesa's Data Security and Privacy Principles, or DSPs, at <https://www.kyndryl.com/us/en/privacy/terms/document?id=Si20-0005> apply to the standard publicly available Services set out in the Order Document. Any reference to Kyndryl on the DSPs web page above mentioned must be understood as referred to Intesa. At its discretion, Intesa may, from time to time, amend the DSPs and such amendments shall be effective when posted or on the specified effective date. The purpose of any amendments will be to improve and clarify existing commitments and to maintain alignment with currently adopted operational and safety standards or applicable laws. The purpose will not be to degrade security or functionality.
- d. In addition to the DSPs, any Service-specific security features and functions shall be described in the Order Document. The Customer is responsible for selecting, enabling or using the appropriate data protection features available to support its use of the Services. Customer is responsible for evaluating the suitability of the Services for Customer's use of the Content or use of the Content with the Services provided by Intesa. Customer acknowledges that Customer's use of the Services complies with Customer's requirements and instructions for relevant processing required for compliance with applicable laws.
- e. Intesa's Data Processing Addendum (DPA) and DPA Appendices apply to personal data in the Content if, and to the extent that, the European General Data Protection Regulation, (EU/2016/679) (GDPR) applies.
- f. If Intesa stores Content on its own resources, upon expiration or cancellation of the Services or at an earlier time, upon Customer's request, Intesa will return or remove the Content from its resources. Intesa may charge additional fees for certain activities performed at the Customer's request (such as, for example, delivery of the Content in a specific format). Intesa does not archive the Content, however some of the Content may be retained in backup files until their expiry date, as regulated by Intesa's backup retention practices.

5. Warranties and Disclaimer

- a. a. Intesa warrants that it will provide the Services using reasonable care and skill and in accordance with the terms of the applicable Order Document, including any completion criteria, and that the Project Materials will conform to the terms of the Order Document at the time of delivery. The warranty for a Service terminates upon termination thereof.
- b. **Intesa does not guarantee the uninterrupted or error-free operation of the Services or that it will correct all defects. Although Intesa endeavours to provide security measures to ensure the protection of all data, Intesa does not warrant the absence of interruptions caused by third parties or unauthorised third party access to the Services. These warranties are the only warranties given by Intesa and are in lieu of all other statutory warranties, or other warranties or conditions, express or implied, including but not limited to, warranties or conditions of satisfactory quality, merchantability, and fitness for a particular purpose, except as required by mandatory law. Intesa's warranties shall not apply to the extent of misuse, modifications, damage not caused by Intesa, or failure to follow**

written instructions provided by Intesa. Non-Intesa Products are sold on the basis of the Order Document in the state in which they are found, without any kind of guarantee. Third parties may provide the Customer with their own warranties for Non-Intesa Products.

- c. Intesa provides Services that are regulated by public regulatory authorities ("Regulatory Authorities"). If any Regulatory Authority imposes regulatory requirements or obligations on any of the Services, Intesa may at its sole discretion change such Services.

6. Fees, Taxes and Payments

- a. If The Customer agrees to pay: i) all applicable charges specified for the Services or for a Non-Intended Product; ii) additional fees in the event of use beyond the authorised limits; iii) all interest on arrears. Fees due do not include any duties or other duties, taxes, or levies imposed by any authority, arising out of the Customer's purchase under the Agreement and shall be invoiced in addition to such fees. The amounts are due upon receipt of the invoice and payable within 30 days from the date of the invoice to an account specified by Intesa. Prepaid Services must be used within the applicable period. Except as provided in Section 3(e), Intesa does not grant credits or refunds in the case of prepaid, lump sum or other fees otherwise already due or paid. In the event of delayed, failed and/or partial payment and also in the event of consequent actions by Intesa, judicial and extrajudicial, for the recovery of the credit, notwithstanding the provisions of Article 4 of Legislative Decree 231 of 9 October 2002, default interest shall only be due following a formal request by sending a notice of default to the Customer by Intesa, by means of PEC. Notwithstanding the provisions of Article 5 of Legislative Decree No. 231 of 9 October 2002, such interest shall be calculated, starting from the due date of the invoice, on the basis of the interest rate of the European Central Bank in force at the end of the month in which the payment was due by Intesa, increased by the percentage points established by law and in force at the time of the notice of default.
- b. The Customer agrees to: i) pay applicable withholding taxes directly to the appropriate government agency if required by law; ii) provide Intesa with all tax documentation evidencing payment; iii) pay Intesa the amounts due net of applicable withholding taxes; and iv) cooperate fully with Intesa to identify any applicable withholding tax exemptions or reductions, complete and file all relevant documents in a timely manner.
- c. If the Customer imports, exports, transfers, accesses or uses a Service across a border, the Customer agrees to be responsible for and pay to the authorities any customs duty, duty, tax or similar tax determined by the authorities. This excludes any taxes on Intesa's net income.
- d. Intesa will invoice: i) recurring charges at the beginning of the period selected as the billing frequency, as further specified in the Order Document; ii) overage and overdue usage charges; and iii) one-time charges upon acceptance of an order by Intesa.
- e. Intesa reserves the right to change the recurring fees, resource charges and minimum charge amounts upon 90 days' written notice. The change shall apply from the first day of the charging period corresponding to, or immediately following, the effective date of the change specified in Intesa's notice. Intesa may amend the lump sum fees without prior notice; however, the amendment to the lump sum fees will not apply if Intesa receives the order prior to the date of notice of the increase.

- f. Pursuant to Art. 1246 of the Civil Code, the Customer waives the right to set-off in advance.

7. Liability and Indemnities

- a. Intesa's aggregate liability for all actions in connection with the Agreement shall be limited to actual direct damages, suffered by the Customer, up to a maximum amount equal to the greater of one hundred thousand (100,000) euros or the total amount paid (if recurring fees are involved, the maximum amount shall be equal to the amount equivalent to the fees paid for 12 months) for the Services that are the subject of the action, regardless of the grounds for the action. In no event shall Intesa be liable for special, incidental, punitive, indirect, or consequential damages, lost profits, lost business opportunities, lost revenue, or lost anticipated savings. These limitations apply collectively to Intesa, subcontractors, and suppliers.
- b. The following amounts are not subject to the limits specified above: i) payments due to third parties as a result of actions relating to violations described in the following paragraph; and ii) damages that cannot be limited by applicable law.
- c. If third parties bring an action against the Customer alleging that a Service purchased under the Agreement infringes the Customer's patents or copyrights, Intesa shall, at its own expense, assume the defence of the Customer and pay all costs and attorneys' fees awarded in a final judgment, or awarded by Intesa as a result of a settlement. In order to obtain the defence by Intesa with respect to the payment of breach claims, the Customer must promptly: i) inform Intesa in writing of the claims; ii) provide the information requested by Intesa; and iii) allow Intesa to reasonably monitor and cooperate in the defence and negotiation, including mitigation efforts. Intesa's defence and settlement obligations for infringement claims also extend to claims based on open source code that Intesa selects and incorporates into the Standard Services.
- d. Intesa shall have no liability for claims concerning Non-Intesa Products, items not supplied by Intesa or for any violation of law or the rights of third parties caused by the Content or Customer's materials, designs or specifications.

8. Applicable Laws, Jurisdiction and Geographical Scope

- a. Both parties agree to the application of Italian law, regardless of conflict of law principles. The rights and obligations of each party shall apply only in the country in which the transaction is performed, or, if Intesa agrees, in the country in which the Service is used, it being understood that any licences are valid as specifically agreed.
- b. Each Party is also responsible for complying with: (i) laws and regulations applicable to its business activities and Content and (ii) applicable import and export laws and regulations and related sanctions, including those related to the trade control regime of the United States military and any applicable jurisdiction, that prohibit or restrict the import, export, re-export or transfer of products, technology, services or data, directly or indirectly, to or for certain states, for certain uses or to certain end users.
- c. The Parties undertake and guarantee, each for the part of its competence, compliance with current legislation on the safety and protection of workers including, but not limited to, the provisions of Legislative Decree 81/08 and subsequent amendments.
- d. Intesa shall not act as an exporter or importer for the Customer of any Content, except as required by data protection laws.
- e. Should any provision of the Agreement be invalid or ineffective, the remaining provisions shall remain in full force and effect.

- f. The terms of the Agreement do not in any way limit consumer rights that cannot be waived or restricted by agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- g. All disputes are subject to the exclusive jurisdiction of the Court of Turin.

9. General Provisions

- a. Intesa is an independent supplier and has no agency, joint venture, partnership or fiduciary relationship with Customer, nor does Intesa undertake any obligation or liability of Customer for Customer's operations or business. The Customer is responsible for its own use of the Services and for determining whether the Services, Content and systems provided by the Customer, including the network and combinations thereof, meet its requirements for capacity and performance adaptability. The Customer shall be responsible for planning and requesting changes to the Services, as well as additional capacity required to support anticipated peaks in demand for resources that may significantly increase transaction volumes, or utilisation of system resources.
- b. Intesa acts only as a provider of Information Technology. Any indications, suggestions for use or guidelines on the Customer's use of the Services provided by Intesa do not constitute legal, medical, health, accounting or other professional advice; in such areas, the Customer should obtain expert advice if necessary. Each party is responsible for (i) determining the assignments of its own personnel and (ii) relations with its subcontractors and/or sub-suppliers, if any, as well as for their direction, control and remuneration.
- c. The Customer may not use the Services if the failure or interruption of the Services may lead to death, serious personal injury or damage to property or the environment.
- d. Each Party shall not disclose any confidential information to employees or subcontractors and/or sub-suppliers without a separate confidentiality agreement signed between the Parties. If any confidential information is exchanged in connection with the Agreement, the confidentiality agreement signed between the applicable Parties shall be referred to as an integral part of the Agreement and shall be subject to the terms and conditions contained therein.
- e. Intesa shall provide or make available the Services, as described in the Order Documents: i) following the sending by the Customer of the Order Form, which shall subsequently be accepted by Intesa by written notice; or ii) following acceptance by the Customer of the Offer Proposal sent by Intesa to the Customer. As the GTC may apply to transactions after the date of acceptance of the GTC by the Customer, Intesa may amend the GTC with at least 90 days' prior written notice. Amendments are not retroactive; they apply only from the effective date to: i) new orders; and ii) renewals. The Customer agrees that changes to the GTC shall be deemed to have been accepted by: i) issuing new orders; or ii) continuing to use the Service after the effective date specified in the notice; or iii) accepting renewal orders after receipt of the change notice. Except as set out in these GTC or specified in an Order Document, all amendments to the Contract must be signed by both parties.
- f. Intesa maintains an established set of standards of business conduct and related guidelines against conflicts of interest, market abuse, bribery and fraud. Intesa and its staff comply with these policies and require suppliers to have similar policies in place. Intesa, by virtue of the above principles and the provisions of Legislative Decree 231/2001, has adopted and effectively implemented its own Organisation, Management and Control Model. Moreover, as it belongs to the Kyndryl group, it adheres to and applies the Code of Ethics published on <https://www.intesa.it/codice-etico/> and, by policy, does not subscribe to any others.
- g. Intesa and its suppliers require the use of business contact information and certain account usage information. Such information is not the Contents. Business contact information is used to communicate

and manage business relationships with the Customer. Examples of business contact information are, for example, name, company telephone number, address, email and user ID and tax data (Tax Code/VAT number). Account usage information is necessary to enable, provide, manage, support, administer and improve the Services. Examples of account usage information include reported errors and digital information collected, while using the Services, through tracking technologies such as cookies and web beacons. The Intesa Privacy Statement available on the web page <https://www.intesa.it/privacy-online/> provides further details on the collection, use and processing by Intesa of commercial contact information and on the use of the account. When the Customer provides information to Intesa and notification or consent from natural persons is necessary for the purposes of such processing, the Customer must inform the interested parties and obtain their consent.

- h. Intesa may provide Non-Intesa Products, or a Service that allows access to Non-Intesa Products, which may require acceptance of third-party contractual terms by the Customer. The connection or use of Non-Intesa Products constitutes acceptance by the Customer of these terms. Intesa is not considered a party to such agreements with third parties and is therefore not responsible for Non-Intesa Products. Access to Non-Intesa Products may be interrupted at any time if the third party interrupts them or if Intesa no longer makes them available. In case of purchase of Non-Intesa Products, additional conditions may apply.
- i. Neither party may, without the prior written consent of the other party, transfer to third parties, in whole or in part, the contractual relationships governed by the Agreement. Intesa may assign its right to receive payments. Intesa will however remain responsible for fulfilling its obligations. The transfer of this contract by Intesa, together with the sale or transfer of the business unit including a Service, is in no way limited. In the event of a transfer, Intesa may share this Agreement and the related documents.
- j. These GTC apply to Intesa and to the Customer (who accepts these conditions or a document that refers to them).
- k. Neither Party grants the other the right to use its (or those of its corporate group) trademarks, trade names or other names in any publication, including promotional publications or on websites, without the prior written consent of the other Party.
- l. All communications relating to the Contract shall be in writing and sent to the address specified in the Contract, unless a different address is specified in writing by either party. The parties agree to the use of electronic means, such as e-mail, for their communications. Any reproduction of the terms of the Agreement made by reliable means shall be deemed equivalent to the original. This Agreement supersedes any prior negotiation, verbal or written communication between the parties.
- m. No right or title to sue a third party is created by the Agreement or any order governed by the Agreement. Neither party may bring any action arising out of or relating to the Contract more than two (2) years after the event giving rise to such action has occurred. Neither party shall be liable for any failure to perform its obligations, other than those of a monetary nature, due to force majeure. Each party must give the other a reasonable opportunity to perform its obligations before bringing an action for non-performance. Where either party requires approval, acceptance, consent, access, cooperation or similar action, such action may not be unreasonably delayed or withheld.
- n. Intesa is responsible for the obligations of the Contract also for its third-party suppliers, and will make appropriate arrangements to enable Intesa to fulfil its obligations.
- o. Unless specifically agreed otherwise, the Customer agrees that each of its orders referred to in these GTC represents a separate contract, legally independent of the others.
- p. p. Service Recipients ("SR" are third parties, unrelated to the Agreement, to whom Intesa may provide Services at the specific request of the Customer. In the event that the Customer requests the provision of a Service on behalf of SR and, in the event that Intesa accedes to such request, the Customer, by signing the Contract, represents and warrants that it will enter into specific agreements with SR prior to Intesa's provision of the Service to such parties and that such agreements will provide, for the benefit of

Intesa, that (i) unless otherwise provided by mandatory law, SR shall not bring any action or be a party to any legal action or proceeding, directly or indirectly, against Intesa or its employees, directors, officers, arising out of or in connection with the relevant agreement between Intesa and the Customer; (ii) SR shall send all communications to the Customer and not to Intesa, unless otherwise provided. Intesa's acceptance of or actuation of certain communications from SR shall not constitute consent, even indirectly, to the establishment of a contractual relationship between Intesa and SR(s). The Customer shall be fully responsible for the performance of its obligations under the relevant agreement signed in connection with the Services provided to such SR. Nothing in this provision relieves the Customer of its obligations or increases the obligations of Intesa under the Agreement.